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APPELLEE'S BRIEF

COURT OF APPEALS OF KENTUCKY

FILE NO. 75-775

JEROME WARD

APPELLANT

V. APPEAL FROM MASON CIRCUIT COURT
HON. JOHN H. CLARKE, SPECIAL JUDGE

COMMONWEALTH OF KENTUCKY

APPELLEE

BRIEF FOR APPELLEE

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This is to certify that a copy of the foregoing Brief for Appellee has been mailed, postage prepaid, to the Hon. John H. Clarke, Special Judge, Mason Circuit Court, Court House, Maysville, Kentucky 41056; Hon. Woodson T. Wood, Commonwealth Attorney, State National Bank Building, Maysville, Kentucky 41056; and Hon. Jack E. Farley, Public Defender, 625 Leawood Drive, Frankfort, Kentucky 40601, Counsel for Appellant, this 17th day of December, 1975.

FILED
DEC 17 1975
FRANCES JONES MILLS
CLERK
COURT OF APPEALS


Assistant Attorney General

4939

COURT OF APPEALS OF KENTUCKY

FILE NO. 75-775

JEROME WARD

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V.

APPEAL FROM MASON CIRCUIT COURT
HON. JOHN H. CLARKE, SPECIAL JUDGE

COMMONWEALTH OF KENTUCKY

APPELLEE

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STATEMENT OF THE QUESTIONS PRESENTED

- I. WHETHER OR NOT THE TRIAL COURT ABUSED ITS DISCRETION BY OVERRULING THE MOTION FOR A NEW TRIAL?
- II. WHETHER OR NOT THE TRIAL COURT COMMITTED SUBSTANTIAL PREJUDICIAL ERROR IN FAILING TO CONDUCT A HEARING TO INDEPENDENTLY DETERMINE APPELLANT'S COMPETENCY TO STAND TRIAL?

COUNTERSTATEMENT OF THE CASE

Appellee accepts as essentially correct the Statement of the Case as presented by appellant. Additional relevant facts will be provided wherever necessary.

ARGUMENT

I.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION
BY OVERRULING THE MOTION FOR A NEW TRIAL.

Appellant offered in exculpation of his criminal conduct evidence of mental disease as permitted under KRS 504.020. This evidence is not an absolute defense but it is to be considered by

the trier of fact together with the rest of the evidence. Appellant failed to follow the procedures as set forth in KRS 504.050 and the trial court should have excluded the testimony of the psychiatrist. However, the testimony was allowed without objection by the Commonwealth and was available for consideration by both the court and the jury.

The psychiatrist's testimony was essentially that at the time he saw the defendant he was suffering from acute schizophrenia. The psychiatrist would not testify that at the time of the offenses the defendant was in such a condition (Transcript of Evidence pp. 68, 76, 79, 81). Even without rebuttal testimony there was sufficient evidence for the jury to disregard the defense and for the trial court to deny his motion for new trial. The right to grant a new trial is discretionary, and absent an abuse of that discretion the ruling should not be overturned. Jillson v. Commonwealth, Ky., 461 S.W.2d 542 (1970).

Appellee does join appellant in asking this Court to consider the implications of Mullaney v. Wilbur, ___ U.S. ___, 95 S.Ct. 1881 (1975) as applied to subsection (3) of KRS 504.020.

II.

THE TRIAL COURT DID NOT COMMIT SUBSTANTIAL
PREJUDICIAL ERROR IN FAILING TO CONDUCT A
HEARING TO INDEPENDENTLY DETERMINE APPELLANT'S
COMPETENCY TO STAND TRIAL.

In light of Via v. Commonwealth, Ky., 522 S.W.2d 848 (1975), Drope v. Missouri, ___ U.S. ___, 95 S.Ct. 896 (1975), and other cases cited by appellant, appellee admits that an evidentiary hearing should have been conducted but that failure to do so was not substantial error requiring reversal. RCr 9.24.

CONCLUSION

For the foregoing reasons appellee submits that the judgment of the Mason Circuit Court should be affirmed, but in the event this Court orders a new trial and the defense is again insanity, the procedures in KRS 504.050 should be mandated.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Victor Fox".

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